

File

BEFORE THE  
STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of the Noncomplying )  
Private High Capacity Irrigation )  
Well Constructed by Sam's Rotary ) Case No. IH-95-06  
Well Drillers, Inc. on Property )  
Located in the Town of Lowville, )  
Columbia County, Wisconsin )

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In May, 1989, Sam Vander Galien, d/b/a Sam's Rotary Well Drillers, Inc., constructed a private high capacity irrigation well on property owned by Robert Mountford. The Department of Natural Resources (Department) alleges the well does not meet the plumbness and alignment requirements of the Department. On March 17, 1995, the Department issued Order No. 94-SDEE-126 to Sam Vander Galien ordering him to properly abandon the existing well and construct a replacement well. On April 17, 1995, Sam Vander Galien filed a petition for a review of the order. On April 26, 1995, the Department forwarded the file to the Division of Hearings and Appeals for hearing.

Pursuant to due notice, a hearing was held on July 13, 1995, at Portage, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with §§ 227.47 and 227.53(12)(c), Stats., the PARTIES to this proceeding are certified as follows:

Sam's Rotary Well Drillers, Inc., by

Sam Vander Galien, President  
P. O. Box 150  
Randolph, Wisconsin 53956-0150

Wisconsin Department of Natural Resources, by

Milton L. Donald, Attorney  
P. O. Box 7921  
Madison, Wisconsin 53707-7921

FINDINGS OF FACT

1. Robert Mountford owns property with the legal description of the NE 1/4 of the NE 1/4 of Section 30, T11N, R10E, Town of Lowville, Columbia County, Wisconsin.

Mr. Mountford obtained a permit dated April 11, 1989, for the construction and operation of a high capacity well from the Department of Natural Resources, Bureau of Water Supply. The purpose of the well is to provide water for agricultural irrigation.

2. On May 1, 1989, a private high capacity irrigation well was constructed by Sam Vander Galien, d/b/a Sam's Rotary Well Drillers, Inc., on the property owned by Robert Mountford. The well constructed by Mr. Vander Galien has a fourteen inch diameter well casing pipe and is over 150 feet deep. After the well was drilled, Mr. Vander Galien installed a used oil cooled pump which had been obtained by Mr. Mountford. Mr. Vander Galien testified that the pump was installed without any problems. At the time the pump was installed it performed properly and there was no vibration.

3. At some point in time, Mr. Mountford began experiencing problems with the pump installed by Mr. Vander Galien. The first problem which occurred is that the oil lubrication tube broke. Upon the advice of Mr. Vander Galien, Mr. Mountford continued to use the pump despite the fact that it was no longer oil cooled. Eventually the pump began to vibrate loudly and then stopped operating completely. Mr. Mountford contacted Layne-Northwest Company to replace the pump. Employees of Layne-Northwest had difficulty removing the existing pump from the well because of a binding problem. They suspected that the binding was the result of plumbness and alignment problems with the well. On May 18 and 19, 1994, Layne-Northwest employees performed a plumbness test on the well.

4. The plumbness test conducted by Layne-Northwest is performed as follows. A spool piece is attached to a cable and lowered into the borehole of the well. The spool piece is approximately eighteen inches long and has a diameter a half inch less than the diameter of the well borehole. The cable is suspended from a hang point connected to a derrick constructed over the well opening. The cable is centered over the borehole. The spool piece is lowered into the well at five foot increments. At each five foot increment two measurements are taken of the distance between the center of the borehole and the position of the cable at the surface of the borehole. Distance measurements are taken from a north-south plane and from an east-west plane.

If at a given depth, the cable is at the exact center of the borehole the well is plumb at that depth. If the cable deviates from the center of the well at any particular depth the well is out of plumb at that depth. The amount the well is out of plumb can be calculated by measuring the distance the cable is from the center of the well and applying the Pythagorean theorem.

5. On May 20, 1994, Layne-Northwest supplied the Department with a copy of the plumbness test performed by the company. The test indicated that the well is between twenty and thirty inches out of plumb within the first hundred feet of its depth. The maximum deviation allowed by former § NR 112.15(1), Wis. Adm. Code (the rule in effect

at the time the well was constructed), for a well fourteen inches in diameter was seven inches. Currently, § NR 819.19(1), Wis. Adm. Code, is the rule that applies. Section NR 819.19(1), Wis. Adm. Code allows a maximum deviation of 75% of the well diameter per hundred feet of well depth. In the instant case this would mean the maximum allowable deviation for the subject well is 10.5 inches within the first hundred feet of depth.

6. A Notice of Noncompliance (NON) was sent to Sam Vander Galien on June 17, 1994, alleging that the well does not meet the plumbness and alignment requirements contained in § NR 112.15, Wis. Adm. Code (renumbered to § NR 812.19, Wis. Adm. Code in 1994). The NON directed Mr. Vander Galien to return to the site, properly abandon the non-complying well and construct a replacement well meeting all applicable administrative code requirements, including plumbness and alignment, by July 15, 1994.

7. A Notice of Violation was sent to Mr. Vander Galien on August 23, 1994, indicating that he had failed to return to the property, properly abandon the existing well and construct a complying replacement well. An enforcement conference was scheduled for October 6, 1994. An attempt was made to resolve the dispute between Mr. Mountford and Mr. Vander Galien. No resolution was reached and the Department issued its order on March 17, 1995.

8. Layne-Northwest installed a replacement pump in the well on the Mountford property. The record contains no evidence that the employees of Layne-Northwest had any problems installing the replacement pump in the well. At the time of the hearing the replacement pump was operating properly. For reasons discussed below, the record does not contain sufficient evidence to find that the well constructed by Sam's Rotary Well Drillers, Inc., does not meet the plumbness and alignment requirements of the Department.

## DISCUSSION

The Department alleges that the well constructed by Sam's Rotary Well Drillers, Inc., on the Mountford property does not satisfy the plumbness and alignment requirements contained in the Wisconsin Administrative Code.<sup>1</sup> This allegation is based on two pieces of evidence. The first piece of evidence is the plumbness test performed by Layne-Northwest

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<sup>1</sup> The Department alleges that the well does not comply with the plumbness and alignment requirements in effect at the time the well was constructed or the current requirements. For purposes of this decision the current requirements will be considered. It is appropriate to consider the current requirements because if construction of a replacement well is ultimately ordered, it would have to meet the current requirements.

Company. The test shows that the well does not meet the plumbness requirements of the Department. No alignment test was performed; however, based on the results of the plumbness test the representative of Layne-Northwest concluded the well probably does not meet the alignment requirements of the Department.

Mr. Vander Galien testified at the hearing that he observed a portion of the test performed by Layne-Northwest employees. While he was observing the test being conducted, there was no windshield protecting the cable nor was there a v-notched board attached to the mast to keep the cable centered in the borehole. Although a windshield is not required for a plumbness test, it is important that the cable position not be affected by any external factors such as wind during the test. Similarly a V-notched board is not mandatory for conducting a plumbness test; however, it is essential that the cable suspending the weighted spool piece be located in the exact center of the borehole at the outset of the plumbness test and that it be suspended from a fixed hang point. Suspension from a fixed hang point is critical both for making sure the measurements of the deviation of the cable accurately reflects deviation in the borehole and for calculating the deviation of the bore hole using the Pythagorean theorem.

The lack of a windshield and V-notched board, or other device to keep the cable centered in the borehole could affect the accuracy of the data and make the test results unreliable. No other persons who participated in or observed the plumbness test testified at the hearing. A representative of Layne-Northwest did testify at the hearing; however, he was not present during nor did he participate in the plumbness test. His testimony was based on reviewing documents from their file and his understanding of standard procedures employed by Layne-Northwest technicians when conducting plumbness and alignment tests.

The other piece of evidence the Department relies on to show the well is not within the plumbness and alignment standards, is the fact that the pump installed by Sam's Rotary Well Drillers, Inc., was damaged when it was removed from the well for replacement. It is alleged that the damage was the result of the well not being within the plumbness and alignment standards. The pump originally installed was a used one obtained by Mr. Mountford. There is no evidence regarding the condition of this pump at the time it was installed other than Mr. Vander Galien's testimony that it worked and there was no vibration after it was initially installed.

Mr. Vander Galien alleges that the well is within the plumbness and alignment standards. Mr. Vander Galien did not perform a plumbness and alignment test on the well; however, his opinion that the well is within the plumbness and alignment requirements is based on the fact that the initial pump and the replacement pump installed by Layne-Northwest were installed without significant problems. Mr. Vander Galien provided credible testimony that if the well was as out of plumb and alignment as shown by the test results

obtained by Layne-Northwest, neither of the pumps which were installed could have physically been placed into the well.

The fact that both the pump initially installed by Sam's Rotary Well Drillers, Inc., and the replacement pump installed by Layne-Northwest were installed without significant problems indicates the well is relatively plumb and straight. There is not sufficient evidence in the record to find that the well constructed by Sam's Rotary Well Drillers, Inc., does not meet the plumbness and alignment requirements of the Department.

#### CONCLUSIONS OF LAW

1. Section NR 812.19, Wis. Adm. Code, (formerly § NR 112.15, Wis. Adm. Code) sets forth plumbness and alignment requirements for wells.
2. Pursuant to § 227.43(1)(b), Stats., the Division of Hearings and Appeals has the authority to issue the following order

#### ORDER

The order of the Department of Natural Resources requiring Sam Vander Galien to abandon the existing well on the property owned by Robert Mountford and construct a replacement well (Order No. 94-SDEE-126) is dismissed.

Dated at Madison, Wisconsin on August 17, 1995.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By Mark J. Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.